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Chairman: Mr. LEHMAN (Denmark)

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The meeting was called to order at 10.10 a.m.

AGENDA ITEM 141: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SEVENTH SESSION (continued) (A/50/10, A/50/402)

1. Mr. RASHID (Malaysia), referring to the draft Code of Crimes against the Peace and Security of Mankind, said that his delegation supported, in principle, the decision to submit four of the six crimes to the Drafting Committee for consideration. Aggression, genocide, systematic or mass violation of human rights and exceptionally serious war crimes were indeed exceptionally serious crimes of international concern. Although it was difficult to define aggression precisely, draft article 15 could serve as a basis for further elaboration of the term. His delegation could not, however, subscribe to the view that it was incorrect to say that any use of force against the territorial integrity or political independence of any State could be equated with aggression.

2. With respect to the systematic or mass violation of human rights, he felt that that crime should be limited to the most serious abuses, such as torture and forced disappearances. On the other hand, imposition of the death penalty or of preventive detention measures enacted by the legislation of a democratic State should not be regarded as coming within the ambit of that crime. As regarded genocide, his delegation supported the definition found in the International Convention on the Prevention and Punishment of the Crime of Genocide.

3. International terrorism and illicit traffic in narcotic drugs fell short of the requisite criteria to be considered crimes against the peace and security of mankind; moreover, they were sufficiently dealt with in other conventions. Malaysia recognized the seriousness and the deleterious social and economic effects of illicit trafficking in narcotic drugs and had accordingly enacted penal legislation and preventive measures to combat it. However, it hoped that enhanced bilateral and multilateral cooperation would make it possible to address specific issues relating to those matters.

4. He felt that, in order to be considered a crime, wilful and severe damage to the environment would have to be of such magnitude as to threaten the peace and security of mankind present and future. Such damage could be the result of the deliberate detonation of nuclear devices and transboundary pollution. His delegation doubted the future capacity of the nuclear Powers to defuse, and destroy those devices. For that reason, improper disposal of massive quantities of nuclear material and devices could cause an environmental disaster of frightening proportions.

5. With regard to State responsibility, the procedure proposed in article 19 of Part One of the draft, by involving the General Assembly, the Security Council and the International Court of Justice, caused problems that needed to be satisfactorily addressed. In addition, the core issue of crime versus delict had not been successfully addressed vis-à-vis States. Individuals of a State could commit crimes for which they could be convicted and punished by the relevant law enforcement agency of that State. To attempt to analogize by

substituting the State for the individual would demand an in-depth study of the question of whether States could commit crimes.

6. With respect to articles 13 and 14 of Part Two, his delegation agreed that proportionality was the principal requirement to legitimize the taking of countermeasures and as such its inclusion was vital. Although the principle underlying article 14 was acceptable, paragraphs (d) and (e) required further work as in their present form they offered the possibility of subjective construction. In any case, Part Two should be examined as a separate entity in due course.

7. The mechanisms proposed in Part Three offered a tiered system for dispute settlement commencing with negotiation and culminating with the Court. His delegation regarded them as non-controversial.

8. With respect to international liability for injurious consequences arising out of acts not prohibited by international law, he noted the progress achieved through the adoption of 18 draft articles. The principle embodied in draft Article A was an important one, inspired by Principle 21 of the Declaration of the United Nations Conference on the Human Environment and the Rio Declaration on Environment and Development.

9. Malaysia considered that oil spills were among the activities that could result in transboundary harm, while transboundary flooding as a result of the clearing of forests did not come within the scope of that draft article. His delegation saw the need for Articles B and D on prevention and cooperation respectively in the context of transboundary harm. On the other hand, Article C on liability and reparation constituted a statement of principle which needed to be elaborated on.

10. Ms. CHOKRON (Israel), referring to the draft Code of Crimes against the Peace and Security of Mankind, said that her delegation had not forgotten that the atrocities committed during the Second World War, especially against her people, had led the Assembly, in 1947, to ask the Commission to consider a draft code on the subject. She was aware that the preparation of the draft had encountered obstacles and that the differences of view on the subject in the Sixth Committee seemed insurmountable. Nevertheless, the Special Rapporteur's proposal to limit the number of crimes to six seemed to have received the support of many members of the Committee.

11. Agreement had been reached on retaining the crimes against conscience, morality and the fundamental interests of the international community, crimes which were exceptionally serious and therefore threatened the peace and security of mankind. Agreement had also been reached on the need to define the crimes concisely and precisely, as was appropriate in criminal law. There seemed to be convergence on the intellectual and abstract level but, when it came to specifics, differences arose regarding the crimes to be retained and their definition. With regard to the definition of the crimes, it was important to emphasize those aspects which made it possible to attribute a crime to an individual, including one acting on behalf of a State. That element was not included in the definition of aggression proposed by the Special Rapporteur. The concept of State crime was discussed both in the context of the draft Code

of Crimes and in that of State responsibility, but that did not correspond either to the reality of international relations or to the international law established by the International Convention on the Prevention and Punishment of the Crime of Genocide. For that reason, it should be emphasized that only individuals could be brought to trial.

12. Although the new title "Crimes against humanity" proposed by the Special Rapporteur was more appropriate, it should be specified that the concept covered only crimes committed in a situation of armed conflict and deliberately directed against a civilian population. The Commission should consider only the most serious war crimes. In that connection, she recalled her delegation's reservations to Additional Protocol I to the 1949 Geneva Conventions.

13. The theme of State responsibility was basic to maintaining harmonious international relations. The Commission's report asked members of the Committee for their opinion on two basic questions: the legal consequences of internationally wrongful acts termed crimes in article 19 of Part One of the draft and how to resolve the disputes relating to the legal consequences of an international crime. Israel had repeatedly expressed its reservations with respect to the concept of State crime introduced in article 19. It would therefore refrain from commenting on a proposal it could not accept. In that connection, she proposed that the concept of State crime and the distinction between crimes and delicts in the context of responsibility should be reviewed, as well as the usefulness of the concept itself in view of its practical consequences.

14. Turning to the settlement of disputes relating to the legal consequences of an international crime, she said that the idea of compulsory arbitration or compulsory conciliation could be useful. Under article 5, paragraph 2, however, the State against which countermeasures had been taken was entitled unilaterally to submit the dispute to an arbitral tribunal. Yet it was precisely that State which had violated the international obligation in the first place, thereby leading the other State or States to take countermeasures. It was not clear, in that case, how justice would be achieved or how the principle of the sovereign equality of States would be strengthened.

15. On the issue of the law and practice relating to treaties, she stressed the need to determine whether or not a special regime for human rights treaties was necessary. Although the issue of reservations to treaties was not new, no proposal submitted on that issue had had sufficient support to permit the adoption, in the area of the law of treaties, of a clear and comprehensive regime. The inclusion of the issue in the Commission's programme of work was another attempt to achieve that goal. The establishment of a special regime relating to human rights, or in another area, would only exacerbate current disputes and pointlessly hold up consideration of the issue.

16. Mr. AYEWAH (Nigeria), turning to the draft Code of Crimes against the Peace and Security of Mankind, said that his delegation could accept in principle the suggestion by the Special Rapporteur to limit the list of crimes, so long as that would promote consensus and facilitate acceptance of the Code by the international community. All the same, he would prefer it if all the articles adopted by the Commission on the first reading were considered, since a

comprehensive Code would be more effective for the strengthening of international law. His delegation welcomed the proposal to replace the title of article 21 with "Crimes against humanity", and favoured the inclusion in the Code of institutionalized racial discrimination and the recruitment of mercenaries. In addition, he reiterated his delegation's view that the draft Code of Crimes should be linked with the draft Statute for an International Criminal Court.

17. On the topic of State responsibility, the question of the legal consequences of internationally wrongful acts characterized as crimes under article 19 of Part One of the draft articles raised legal issues and politically sensitive matters which would have to be addressed. He was aware that many Governments would be reluctant to accept the concept of "State crimes" and that the criminalization of States might result in the punishment of an entire people. Nevertheless, he shared the view of the Special Rapporteur that the Commission should endeavour to strike a fair balance between the ideal and what was possible. The institutional mechanism provided for in article 19 was an interesting proposal, which, if approved, could forestall the possibility of an arbitrary action. Instead of the two-phased procedure referred to in that article, however, his delegation preferred the proposal whereby the General Assembly or the Security Council would appoint an independent commission of jurists or, better still, the International Court of Justice would appoint an ad hoc chamber to exercise those functions. His delegation supported the inclusion in the draft of a compulsory dispute settlement procedure and believed that it could be useful in protecting weak States from possible abuse on the part of powerful States, particularly with regard to the right to take countermeasures.

18. With regard to the topic of international liability for injurious consequences arising out of acts not prohibited by international law, he stressed the need to identify the dangerous activities falling within the scope of the topic and welcomed the establishment of a working group to study that aspect, focusing on issues of prevention related to activities creating a risk of causing transboundary harm. In principle, his delegation agreed with the draft articles adopted thus far by the Commission but believed that human beings should not be entirely excluded from consideration in an instrument on liability for environmental damage. Thus, he hoped that the wording of article A would be improved; it would be more appropriate, in the first part, to state the principle in a positive form.

19. On the question of State succession and its impact on the nationality of natural and legal persons, he supported the view that future reports of the Special Rapporteur should reflect recent State practice and believed that consideration should be given first to the nationality of natural persons and then that of legal persons, and that the common principles applicable to both should be determined. In determining the parameters of the topic, care should be taken not to over-emphasize the role of international law, bearing in mind the general recognition of the exclusive character of the competence of the State in determining which individuals were its nationals. As for the nature of the instrument, he believed that a declaration would suffice.

20. Finally, on the question of the law and practice relating to reservations to treaties, his delegation believed that the entitlement to make reservations

and to become party to a convention subject to such reservations was a sovereign right enjoyed by every State under international law.

21. Mr. STRAUSS (Canada), turning to the draft Code of Crimes against the Peace and Security of Mankind, said that he was pleased that the Commission had reduced the Code's scope to four crimes, and was continuing consultations on two others. Some of the crimes included in the draft, however, were already covered by other multilateral conventions and they were all included in the draft Statute for an International Criminal Court. The Commission should concentrate its efforts on those initiatives with the greatest chance of success, notably, the draft Statute for an International Criminal Court, where a widely accepted goal and efficient working methods had combined to produce excellent results. At the same time, care must be taken to avoid inconsistencies between the draft Statute and the draft Code of Crimes.

22. Where the issue of State responsibility was concerned, his delegation shared the reservations expressed by previous speakers on article 19 and on the question whether States could commit crimes. He suggested that the Commission should perhaps focus on areas where it was easier to reach general agreement.

23. With regard to international liability for injurious consequences arising out of acts not prohibited by international law, the Commission itself drew attention to the difficulty of finding a universally accepted concept of environment, a problem which was certain to affect efforts to define the scope of any future instruments on that topic. The law of the environment involved many political and economic issues and his delegation felt that a more coordinated approach to the problem would produce more substantive results.

24. With regard to the issue of State succession and its impact on the nationality of natural and legal persons, he welcomed the progress made by the Commission during its latest session and he also commended it on the approach it had taken to the issue of the law and practice relating to reservations to treaties.

25. Finally, turning to the programme of work of the Commission, his delegation shared the concerns stated by other delegations. The excessive time spent by the Commission on certain issues was due, first and foremost, to the lack of consensus on fundamental issues related to them. His delegation therefore urged the Commission to review its practices with a view to speeding up its work. He also suggested that the resolution to be adopted by the General Assembly during its current session should note the concerns expressed during the Committee's debate.

26. Mr. HAFNER (Austria) said that there was an urgent need to regulate the matter of State succession and its impact on the nationality of natural and legal persons owing to the inadequacy of existing international regulations. Moreover, the question of nationality was of vital importance to individuals inasmuch as it determined their access to certain instruments that guaranteed their rights.

27. As recent experience had shown, States affected by a case of State succession did not resolve questions of nationality through treaties or

agreements. International regulation of the issue was therefore required. The Working Group had been right to stress, at the start of its deliberations, the duty of the States concerned to consult among themselves to solve the problems stemming from territorial changes.

28. He agreed with the Special Rapporteur's basic assumption that nationality could be granted only under internal law and not under international law. He also agreed that international law placed limitations on the right of States to grant their nationality, although opinions still differed on the question of recognition by third States. Some aspects of the rules on nationality undoubtedly fell within the province of human rights, whether or not article 15 of the Universal Declaration of Human Rights, according to which everyone had the right to a nationality, was viewed as a norm of general customary law. Moreover, the 1961 Convention on the Reduction of Statelessness created an obligation for States to grant their nationality. Article 10 of that Convention could therefore be viewed as complementary to article 15 of the Universal Declaration of Human Rights.

29. That provision therefore supported the view that the protection of the individual against any detrimental effects resulting from a territorial change should always constitute the ultimate goal of the Sixth Committee when it explored existing rules or formulated new rules on nationality. The International Law Commission should scrutinize the effect of different types of territorial changes on nationality. For practical reasons, it should start from the different categories of State succession which were identified in the two Vienna Conventions of 1978 and 1983. However, such a method should not exclude the possibility of reviewing that categorization in the light of recent practice. In particular, the question of the extent to which the rights and duties of the new State and the predecessor State differed from the usual rules on naturalization and denaturalization should be examined. The question of whether the legal regime applicable to a partial succession differed from that of a universal regime should also be explored.

30. He did not agree with the Special Rapporteur's view that possession of the nationality of the predecessor State should be determined by whether individuals had been born in the territory affected by the change of sovereignty. The real question was whether, at the time when the succession had occurred, an individual had possessed the nationality of the predecessor State, through the principle of jus soli or jus sanguinis or through any other means recognized by international law. The second criterion to be taken into account was whether or not the individual was resident in the territory of the successor State.

31. The basic question was whether the successor State had any obligation to grant its nationality to persons residing in its territory and possessing the nationality of the predecessor State. An affirmative reply was usual in such cases inasmuch as every State needed a population; it could be deduced therefrom that any entity claiming to be a State was obliged to grant its nationality. That did not mean, however, that such an obligation could be imposed on a State by international law in the absence of any relevant domestic law. Existing legal instruments should be used to establish which categories of persons acquired nationality ex lege and which categories were entitled to acquire

nationality on a privileged basis, in other words, by exercising an option to that end.

32. At all events, those basic questions should not divert attention from the no less difficult issues ensuing from State succession, such as the reduction of statelessness, dual nationality and diplomatic protection where the principle of the continuity of nationality was difficult to apply in the case of a new State.

33. The problem of State succession therefore continued to require a great deal of work, in particular the collection and examination of the laws and other practices of States. The first step should be the preparation of guidelines which, despite their lack of legal status stricto sensu, could create more certainty in international relations since States that conformed to them would enjoy fumus juris and third States would find it difficult to deny recognition of nationality granted under such guidelines.

34. The preliminary conclusions of the Working Group should be checked against the actual practice of States so that rules de lege lata could be clearly distinguished from rules de lege ferenda. However desirable an obligation to negotiate might be, contemporary international law did not seem to impose any such obligation on the successor State; moreover, it could not be deduced from the general obligation to negotiate in the case of a conflict. Furthermore, using the fact of a person's birth in the territory of the successor State as a criterion for the obligation to grant nationality was questionable. Questions relating to the reduction of statelessness were apparently being confused with questions relating to State succession. Why, for instance, should a person who had been stateless under the regime of the predecessor State and who resided in the territory of the successor State acquire the nationality of the latter merely as a consequence of State succession? In such a case, the rules governing the reduction of statelessness should apply irrespective of State succession.

35. Questions related to the nationality of juridical persons should not be addressed in the same context as statelessness for the following reasons: the nationality of juridical persons did not constitute such a persuasive factor for statehood as that of natural persons and was not intrinsically connected with the sovereignty of States; conventions on the reduction of statelessness and on nationality usually referred to natural persons; juridical persons could not be treated on the same footing as natural persons, since it would be difficult to deduce, from general international law, a duty to grant nationality to certain juridical persons; lastly, the regime of juridical persons in cases of State succession depended mainly on the continued application of the civil law of the predecessor State. In the light of the existing difficulties regarding the nationality of natural persons, it would therefore be advisable to defer consideration of the matter for the time being and to concentrate on questions requiring immediate attention.

36. With regard to chapter VI of the report of the International Law Commission, reservations to treaties were one of the most complex areas of international law. The rules of treaty law therefore needed to be clarified in the light of the current practice of States. In recent years, the problem of reservations had been particularly acute in the area of human rights treaties.

Many reservations entered to those instruments were incompatible with the purpose of the treaties and were therefore inadmissible. The legal effects of inadmissible reservations and how they were to be addressed had become matters of concern for the legal advisers of many States.

37. In that connection, a meeting of legal advisers from the Ministries of Foreign Affairs of six European countries had been held in Vienna in June 1995 to exchange views and discuss options with regard to recent reservations entered by States acceding to or ratifying human rights instruments. The first report of the Special Rapporteur provided ample proof of the complexity of the issue and set out the many questions to which the reservation regime in the Vienna Convention on the Law of Treaties had failed to provide satisfactory solutions. Subsequently, the 1978 Vienna Convention on Succession of States in respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations had merely adopted the regime on reservations contained in the Vienna Convention on the Law of Treaties.

38. Human rights treaties should incorporate clauses that regulated permissible reservations in order to preclude such problems as the one raised by Iran, which, upon its accession to the Convention on the Rights of the Child, had reserved the right not to apply any provision of the Convention that was incompatible with Islamic law. With regard to that reservation, Austria had stated that it could not make a final assessment as to its admissibility without further clarification from Iran. Consequently, until such time as it received that clarification, Austria considered that the reservation did not affect any provision whose implementation was essential to the fulfilment of the object of the Convention on the Rights of the Child.

39. Reviewing chapter VII of the Commission's report, his delegation took note of the Commission's endorsement of the Working Group's recommendation that a feasibility study should be undertaken on a topic concerning the law of the environment. In so doing, the Commission recognized the need for an integrated approach to prevent the continuing deterioration of the global environment. The study would encompass the following topics: general principles, substantive and procedural rules, measures for the implementation of obligations for the protection of the global environment, duties erga omnes, "global commons" and shared (or transboundary) resources. Over the previous decades, the international community had followed a sectoral approach in regulating environmental situations through a series of international agreements. The feasibility study, however, would depart from that traditional approach. In preparing the study, close cooperation should be established with international institutions concerned with environmental law, in order to avoid duplication of work. Furthermore, the study could build on the experience gained by the group of legal experts in environmental law of the World Commission on Environment and Development and the International Covenant on Environment and Development. The study would provide an overall picture of the state of international environmental law and would help to identify general principles which could then be further elaborated.

40. Mr. SMEJKAL (Czech Republic) said that the topic of State succession and its impact on the nationality of natural and legal persons was a complex problem

the analysis of which must take into account a situation in which territorial changes were affecting the nationality of millions of persons. As a contribution to the Commission's work, his delegation had made available legislative texts dealing with the succession by the Czech Republic to the former Czechoslovakia.

41. The norms applicable to the nationality of legal persons should be different from those applicable to the nationality of natural persons because, inter alia, human rights legislation was not applicable to legal persons. Consequently, priority should be given to the consideration of the nationality of natural persons.

42. Even though the consideration of the impact of State succession on nationality had raised many questions, it had confirmed the general principle that nationality was governed principally by domestic law and that international law had a subsidiary application in that area. The function of international law in that area was limited and corrective, in part because its content was rudimentary and limited to a few fundamental principles. The first requirement was that there should be a genuine link in order to avoid positive conflicts. As for negative conflicts, it seemed that international law tended to impose on States the duty to refrain from applying discriminatory criteria in the granting or revoking of nationality and the duty to ensure that State succession did not give rise to the creation of stateless persons. Because of that obligation, predecessor and successor States were required to consult and negotiate with each other with a view to preventing the creation of stateless persons.

43. The Commission had been considering that topic with great sensitivity and realism. For example, with regard to the manner in which a State should fulfil its duty to prevent the creation of stateless persons, the Commission had opted for a flexible solution which offered States a great variety of means to preserve the above-mentioned principles. In addition, the arrangement proposed in that regard was intended to serve as guidelines for States, which, however, would be under no obligation to apply them.

44. It would be helpful to further refine the terminology used in the report, which could give rise to misinterpretations. Nevertheless, his delegation had no difficulty in subscribing to the Working Group's preliminary conclusions, which were consistent with the practice followed in the matter at the time of the dissolution of Czechoslovakia. That experience showed that, in the case of a federal predecessor State, the application of the criteria of the nationality of federal States could be an option that recommended itself naturally on account of its simplicity, convenience and reliability. In general, that was reflected in the Working Group's report, although in paragraphs 11 (c), 12 (a), 14 (d), 19 (c) and 21 (a) the word "and" should be replaced by the words "or, in the case of a federal predecessor State composed of federated entities which conferred a secondary nationality,".

45. The Commission should give more careful consideration to the consequences of the failure to observe the principles which governed the granting and revoking of nationality, with a view to determining whether they could be invoked by persons or whether the debate should be concerned only with State responsibility. However that might be, given the nature of the topic, his

delegation was of the view that the results of the Commission's work thereon should take the form of a document that was declarative in nature. With regard to the continuity of nationality, he agreed with the Working Group's conclusions expressed in paragraphs 31 and 32 of its report. However, since the Commission had decided to take up the topic of diplomatic protection, it should continue to consider the question of the continuity of nationality in the context of that topic, since, in the event of State succession, the question would arise first with respect to the exercise of diplomatic protection.

46. On the question of reservations to treaties, his delegation agreed on the need to preserve the gains achieved in the Vienna Conventions of 1969, 1978 and 1986. Consequently, the Commission should take up the topic and determine the form which the results of its work thereon should take, given the need to maintain the flexibility of the current system. In that regard, his delegation welcomed the Special Rapporteur's proposal that a guide to past practice in the matter of reservations should be prepared. As for recent signs of the emergence of a more restrictive regime governing reservations to international human rights instruments, he considered that there was no justification for applying different regimes to the consent of States in depending on the particular field regulated by the treaty in question. That differentiation could weaken a well-established legal norm. The law of treaties governed all international agreements and autonomous will continued to be their cornerstone.

47. Finally, a broad approach must be followed in reviewing the Commission's work and due regard paid to the current situation in the area of codification. In particular, it must be borne in mind that the Commission was not the only body that participated in the standard-setting work of the United Nations, nor the only one affected by the current impasse in that task. The crisis in the area of codification and progressive development of international law was the result of many factors, including the exhaustion of the established topics for codification, and could therefore not be attributed only to the Commission's methods of work. Moreover, the Commission had demonstrated that it was capable of applying innovative methods of work, as shown by its increasingly frequent use of working groups and its capacity for innovation in terms of the forms which the final results of its work could take.

48. Mr. ENAYAT (Islamic Republic of Iran) said that the impact of State succession on nationality was one of the most important questions which had been left aside after the 1978 and 1983 Vienna Conventions. Given the human dimensions of the topic, codification was urgently required in that area. The report of the Working Group was a good starting point for further work on that topic. However, it would have been better for the Working Group to focus on the study of positive international law, applicable national legislation and State practice and then proceed to the formulation of recommendations to deal with those issues. His delegation was in favour of adopting a flexible method of work.

49. Turning to the section of the Working Group's report on the obligation to negotiate and to resolve problems by agreement, he noted that States were obligated by treaties and judicial decisions to enter into negotiations. For instance, Article 33, paragraph 1, of the Charter of the United Nations provided that "the parties to any dispute, the continuance of which is likely to endanger

the maintenance of international peace and security, shall, first of all, seek a solution by negotiation". The obligation to negotiate did not mean that States were under any legal obligation to reach agreement; nor did such obligation necessarily involve an obligation to pursue lengthy negotiations if the circumstances showed that they would be superfluous. The obligation of negotiation in that field might be envisaged in application of a treaty but not as an obligation under general international law.

50. Moreover, his delegation agreed that nationality was essentially governed by domestic law and that international law imposed some restrictions on the freedom of action of States in that regard: namely, those stemming from the principle of effective nationality and the protection of human rights and the duty not to pass arbitrary laws.

51. As far as the right of option was concerned, his delegation agreed with the International Law Commission that the individual's will did not have to be taken into consideration in relation to all categories of persons whose nationalities were affected by State succession but only in relation to the categories of persons mentioned in paragraphs 14 and 21 of the Working Group's report. In that regard, a distinction should be made between the case of secession and transfer of part of a State's territory and the case of dissolution of a State. In the latter case, it would be necessary to provide some criteria like the rules of linkage, since the principle of effective nationality should be taken into consideration for the exercise of the right of option. Such criteria were all the more necessary as the right of option did not reflect the codification of existing law but pertained to the progressive development of international law.

52. Ms. FLORES (Mexico) said that the complexity of the topic of international liability for injurious consequences arising out of acts not prohibited by international law accounted for the cautious approach adopted to the drafting of a legal regime in that field. Her delegation supported draft articles A, B, C and D and felt that their adoption by the Commission, albeit on a provisional basis, represented a major step forward in the consideration of the topic. Her delegation also welcomed the Special Rapporteur's proposal to include in the draft the concept of harm to the environment.

53. According to the approach adopted by the Commission, there were two aspects to the analysis of liability for acts not prohibited by international law: prevention and reparation. In both cases, the concept of harm played a fundamental role. Harm was the prerequisite on which State liability should be based; without the existence of harm, it would be contradictory to talk about an obligation to make reparation. The obligations of States with respect to prevention, as listed in articles 11 to 20 of the draft, formed part of international law. However, it was not clear what the consequences of their non-fulfilment were. In order for obligations with respect to prevention to actually lead to reduced risks, their non-fulfilment should entail certain consequences. The Commission should consider that topic in greater depth. She supported the Special Rapporteur's proposal to consider civil liability together with State liability.

54. Concerning the law and practice relating to reservations to treaties, the document considered the current situation relating to reservations under international law in an objective and comprehensive manner. She agreed with the Commission that, despite their ambiguities, the rules on reservations set forth in the Vienna Convention on the Law of Treaties had proved their worth and that future work on that topic should seek to determine how to complement the existing system and, where possible, to fill any gaps. Moreover, a comprehensive approach should be adopted to the issue of reservations. They should be accepted as valid only when they did not frustrate the purpose of the treaty to which they related. In that regard, opposability could be accepted only in the case of reservations that were not related to essential aspects of a treaty.

55. As to the form which the outcome of the Commission's work on that topic might take, in view of the problem of reservations and the need to have a uniform regime, it would be preferable to draft a binding instrument. However, for the time being, the Commission should work on draft articles without prejudging their final form.

56. Finally, the consideration of the topic relating to the protection and inviolability of diplomatic and other persons entitled to special protection under international law as well as the carrying out of a feasibility study on the rights and obligations of States concerning the protection of the environment would be extremely useful.

57. Mr. HALFF (Netherlands) welcomed the fact that the Commission had begun its work with the topic concerning reservations. Since problems with respect to reservations were not restricted to the field of human rights, the Commission's work should encompass reservations to a wide variety of treaties.

58. He agreed with the Commission that the issue of State succession with respect to reservations did not need to have a high priority. Existing written rules provided a clear answer not only in the case of newly independent States but also in other cases of State succession. Thus, written law might appear to be more restrictive than customary law.

59. There was an urgent need to clarify many of the legal questions raised by the Special Rapporteur in his preliminary report. In so doing it would be necessary to find solutions suitable for contemporary treaty practice.

60. With regard to the future work of the Commission on the law of the environment, his delegation had taken note of the endorsement by the Commission of the recommendation of the Working Group to begin a feasibility study on a topic concerning the law of the environment. The Netherlands had always taken a keen interest in the codification and progressive development of such a law and had actively participated in the development of various international agreements and declarations in that regard.

61. International environmental law had developed enormously mainly through the conclusion of a great number of international agreements dealing with the conservation and protection of oceans, seas, rivers, the atmosphere, the ozone layer, climate, biological diversity and cultural and natural heritage, or with

the relationship between the protection of the environment and other matters such as trade, development and armed conflict. In addition to the conservation and protection of such resources, other issues such as the liability for harm caused to the environment had become the subject of agreements and negotiations. The Commission itself had dealt with and continued to deal with the codification and progressive development of certain aspects of the law of the environment. Reference might be made in that regard to the concept of State crime in article 19 of Part One of the draft articles on State responsibility as well as the draft articles on international liability for injurious consequences arising out of acts not prohibited by international law. Environmental agreements had mostly been concluded on a sectoral basis. Many had been concluded on a regional or subregional basis. More recent conventions tended to be of a global nature and dealt with problems relating to the ozone layer, desertification, climate or biodiversity.

62. The time had come to scrutinize the fragmentary corpus of international environmental law and to develop common concepts and general principles which would provide the foundation for the future development of international environmental law. In such work, consideration should be given not only to the substantive rules of environmental law but also to the law on cooperation, the settlement of disputes and liability.

63. His delegation would support the development by the Commission of a set of draft articles laying down common concepts and general principles of international environmental law, provided that that task was achieved within a reasonable period of time. In that connection, an integral approach should be adopted which addressed the environment as a whole, namely, not only shared natural resources or the global commons, but also the environment within the territory of a State. Otherwise, it would be impossible to tackle in an adequate way developments within State boundaries which might be of great international significance.

64. Mr. SIDI ABED (Algeria), speaking on State succession and its impact on the nationality of natural and legal persons, said that nationality was closely linked to domestic law, not only by laws and regulations, but also by constitutions and jurisprudence. However, international law interfered with domestic law and State sovereignty, especially in such special circumstances as State succession and change of nationality. In that area, which was in fact quite narrow, the Commission should undertake, through a careful and thorough study, the difficult task of identifying the limits of States' discretionary prerogatives with respect to the granting of nationality.

65. With regard to the law and practice relating to reservations to treaties, his delegation was aware of the importance and technical nature of what was a complicated issue, for which there were, however, well-established principles and standards. If the Commission must fill in the gaps and clarify the ambiguities in existing texts, it should do so with great care and diligence. The legal framework was established in the Vienna Conventions of 1968, 1978 and 1986, whose effectiveness had been proved despite the imperfections inherent in any normative exercise. Finally, the Commission should take account in its work of the uniformity of the applicable norms in order to avoid getting bogged down in an excessively detailed discussion that could result in the establishment of

disparate regimes or could cast doubt on principles already established in the law of treaties and in respect of reservations.

66. Mr. POLITI (Italy), referring to the draft Code of Crimes against the Peace and Security of Mankind, said that the prospects for the completion of the Commission's work on the draft Code during the coming year had been enhanced by the decision to limit the number of crimes included in that text. That approach would greatly facilitate wide acceptance of the Code. The major problems in defining crimes concerned the crime of aggression, which, in his view, should be included in the Code and subject to the jurisdiction of the future international criminal court. In that regard, he appreciated the effort made by the Special Rapporteur to provide a new text for article 15. The definition given in paragraph 2 of that article should be accompanied by a list of specific acts of aggression. At the same time, a proper balance should be struck between the independence of the judicial body entrusted with the prosecution and punishment of aggression, and the primary responsibility attributed by the Charter of the United Nations to the Security Council for the maintenance of international peace and security.

67. As for the other crimes included in the current list, his delegation agreed with the Special Rapporteur that the definition of genocide should be based on the one contained in the Convention on the Prevention and Punishment of the Crime of Genocide. It also welcomed the new title, "Crimes against humanity", and the content of article 21. Article 22, on war crimes, conformed to established international practice. His delegation also agreed with the decision of the Commission to establish a working group to examine the possibility of covering in the draft Code the issue of wilful damage to the environment. Recent developments sufficiently justified the insertion of that type of crime in the draft Code.

68. Together with the definition of crimes, the question of penalties was crucial both for the preparation of the draft Code and for the establishment of an international criminal court. Respect for the principle of nulla poena sine lege was no less important than respect for the principle of nullum crimen sine lege. The Code's provisions on penalties should be consistent with the corresponding provisions of the statute of the international criminal court. Maximum and minimum limits could be set for each crime, according to its seriousness, and national courts or the international criminal court could exercise discretion within those limits. As an alternative, the applicable penalties could be established with reference to the national legislation of the State in which the crime had been committed. In any event, the application of the death penalty should be expressly excluded. If necessary, the Commission should be allowed to review some of the provisions of the court's statute in the light of the final outcome of its work on the draft Code of Crimes.

69. The report submitted by the Special Rapporteur on State succession and its impact on the nationality of natural and legal persons, addressed a topic that stood at the crossroads of three significant branches of international law: nationality law, the law of State succession and human rights law. He agreed with the Special Rapporteur's recommendation that the Commission should deal separately with the nationality of natural persons and that of legal persons and should concentrate first on the former, given its special relevance for

compliance with international human rights law. The question of the limitation imposed by international law on the freedom of States with regard to nationality was also of crucial importance, both with respect to the power of the predecessor State to deprive the inhabitants of territory it had lost of its nationality and to the obligation of the successor State to grant its nationality to such individuals. The problems of nationality arising in the context of different types of territorial change should be addressed on a case-by-case basis in relation to the characteristics of the various types of succession.

70. The Special Rapporteur on the law and practice relating to reservations to treaties had underlined the ambiguities and gaps in the system established by the Vienna Conventions and had identified the questions to be addressed in the Commission. His delegation agreed with the Special Rapporteur's conclusions. It also welcomed the Commission's decision to authorize the Special Rapporteur to prepare a questionnaire on the practice of States and international organizations in the field of reservations to treaties. The replies to the questionnaire would be extremely useful in clarifying the problems encountered in that area and in identifying possible solutions.

71. The Commission should devote special attention to reservations to human rights conventions. The need to fill in the gaps in the Vienna Convention regime with respect to those treaties was particularly urgent. He also agreed with the Special Rapporteur's idea of drafting model clauses to be included in human rights conventions.

72. With regard to the Commission's programme of work, he said that it would be extremely useful to allow at least three weeks of concentrated work in the Drafting Committee at the beginning of the forty-eighth session. The suggestions by the Commission concerning the two new topics, entitled "Diplomatic protection" and "Rights and duties of States for the protection of the environment", were very helpful. In considering such topics, it would be essential to avoid duplication of the work being done by the Commission under other topics. Therefore, the proposed feasibility study on the law of the environment should concentrate on identifying those aspects not being considered under the topic of international liability.

73. Mr. RAO (Chairman of the International Law Commission) said that the Commission must speed up its work on the topic of "International liability for injurious consequences of acts not prohibited by international law" and give priority to "The law and practice relating to treaties" and "State succession and its impact on the nationality of natural and legal persons".

74. The Commission must formulate the criteria which should guide it in its work, which was the codification and progressive development of international law. In order for the Commission to carry out its work effectively, the greatest possible number of groups of States must participate in that work, and they must be given an opportunity to do so.

75. It must be borne in mind that the main objective of the codification and progressive development of international law was to promote international cooperation with a view to encouraging universal respect for the human rights

and fundamental freedoms of all, without distinction, and to settle disputes that threatened peace by peaceful means. Finally, the objectives of the Commission and of the General Assembly were to promote and identify principles of international law that were universally accepted and that reflected the interests and aspirations of the widest measure of peoples. That task was time-consuming and required patience, tolerance and a spirit of accommodation. The desire to speed up the work of the Commission was clearly legitimate, although the slow pace was not without its value. In any case, the Commission was nothing but an agent of the General Assembly; therefore, any criticism reflected also on the Assembly itself.

76. The consideration by the General Assembly of the Commission's reports, together with the participation of the Chairman and other members of the Commission in sessions of the Assembly, promoted a useful dialogue between those bodies. The comments made in the General Assembly were carefully summarized and transmitted to the Commission, so that it could use them in carrying out its work, which included reviewing its working methods. Unfortunately, the crisis in the Organization threatened to prevent the Chairman and other members of the Commission from attending General Assembly sessions and meetings of other bodies concerned with international law to which the Commission reported on its work. He hoped that the Government of India, the Under-Secretary-General for Legal Affairs and the Director of the Codification Division would find a way to solve that problem.

The meeting rose at 1.05 p.m.